UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA, Plaintiff, v. WESTERN ELECTRIC CO., INC. and AMERICAN TELEPHONE AND TELEGRAPH COMPANY, Defendants.	Civil Action No. 82-0192 (HHG)

TO: THE DEPARTMENT OF JUSTICE

REQUEST OF THE BELL COMPANIES FOR AN INTERPRETIVE LETTER OR, IN THE ALTERNATIVE, A WAIVER TO ALLOW INTERLATA HANDOFF OF PCS CALLS

Five years ago, the district court granted the Bell companies a temporary waiver of the decree permitting intersystem handoff of cellular calls without an equal access obligation. That waiver has been repeatedly renewed, most recently on September 6, 1995. The logic of this relief -- which experience has vindicated -- was that allowing uninterrupted continuation of a wireless call when the cellular customer crosses a LATA boundary benefits competition and consumers. Integration of equal access into the handoff process is not technologically feasible and, if it were, would be unnecessarily inefficient and costly.

The rationale for the handoff waiver applies with full force to BOC personal communications services (PCS). For decree purposes, the PCS services planned by the BOCs are merely cellular

services offered over a different radio frequency and should be covered by the existing handoff waiver. If they are not covered, then extension of the handoff waiver to PCS is necessary and appropriate to allow healthy competition in wireless services.

The Bell companies hereby ask the Department to state its understanding that the cellular handoff waiver permits interLATA handoff of PCS calls or, in the alternative, to concur in a waiver to allow such handoff. We also ask for quick action on this request so that design and construction of BOC PCS systems can go forward without unnecessary delay and uncertainty.

BACKGROUND

1. The Handoff Process. In September 1990, the district court granted a waiver of the decree's interexchange restriction and equal access requirement to allow Bell company cellular affiliates to hand off calls to adjacent systems across LATA boundaries. Opinion & Order (D.D.C. Sept. 12, 1990) ("Handoff Decision").[1] Intersystem handoff, the Court explained, entails use of a dedicated connection between the mobile telephone switching offices (MTSOs) of adjacent wireless systems to continue a call placed over one system when the caller crosses into the other system's service area. Id. at 7-8. This procedure enables wireless carriers to continue a call that is in progress when the caller crosses or travels along the boundary between two service areas. Id. at 18-19 & n.20.

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[1]Unless otherwise noted, all pleadings and decisions cited herein were filed or entered in this case.

The handoff process begins when the MTSO serving a particular customer calculates from relative signal strength that a caller is reaching the fringe of the territory served by a particular radio transceiver ("cell site"). This may happen because the caller is actually crossing the boundary between two cells, or because the caller is near to a boundary and obstructions (such as hills, buildings, or trees) block communications. The MTSO will determine whether another cell site provides a stronger signal to the customer and, if so, the call will be handed off to the cell site that can provide the strongest signal.

Intersystem handoff involves call handoff between two cell sites that are part of adjacent cellular systems. Assume that a wireless customer places call, then crosses into the territory of an adjacent system while the call is in progress. To coordinate intersystem handoff, the MTSO in the area the caller is leaving (the "home" MTSO) first asks the neighboring MTSO to assign the call a specific radio channel and identifies a dedicated connection between this home MTSO and the neighboring MTSO that can be used to carry the call. The home MTSO then instructs the mobile telephone to switch to the designated channel, at which point the call is delivered to the neighboring MTSO (and its associated cell sites) over the dedicated connection. By using the dedicated connection, the call can still be routed via the home MTSO to the called party in the same way that it was before handoff. See Affidavit of Keith Rainer ¶ 10 & Ex. 8 ("Rainer Aff.") (attached hereto as Ex. 1); see also Affidavit of Henry Scott Fox ¶¶ 15-17 ("Fox Aff.") (attached

hereto as Ex. 2) (discussing PCS handoff). All this may occur in a fraction of a second without the customer even being aware that handoff has taken place.

Handoff implicates the decree because an intraLATA call may become an interexchange call simply by virtue of the caller's movement across a LATA boundary that coincides with or lies within the boundaries of the new service area. This problem has no equivalent in the landline network, where customers do not change location during a call. There is no way to anticipate a caller's movement when a call is placed.

Nor is it possible to begin treating the call as an interexchange call, subject to equal access restrictions, as part of the handoff process. The development of a technical standard (known as "IS-41") to allow handoff of calls and other sorts of coordination between different cellular systems was a challenge that occupied the domestic cellular industry for many years. See Affidavit of Thomas E. Wheeler ¶ 4 ("Wheeler Aff.") (attached hereto as Ex. 3). In Europe, a similar standard known as "GSM" was developed to serve the same role.[2] Yet neither standard provides a workable way to transfer a call to the customer's presubscribed interexchange carrier (PIC) during handoff. See, e.g., Affidavit of Thomas Ginter ¶¶ 4-5 ("Ginter Aff.") (attached hereto as Ex. 4); Affidavit of Donald A. Barnes (Barnes Aff.") (attached hereto as Ex. 5).

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[2]GSM stands for "Groupe Speciale Mobile" or "Global Standard for Mobile." The GSM standard is also known as the IS-652 standard.

Incorporating equal access into the handoff process under either standard would require establishing a new connection from the first system's MTSO to the second system's MTSO through the customer's chosen PIC. As the Department concluded in 1991, this additional step was not anticipated when handoff technologies were developed and it generally is not feasible to establish the required connection through a PIC in the short time available to accomplish handoff. See Report of the United States on the Status of Equal Access Technology for Intersystem Handoff (D.D.C. filed June 12, 1991) ("Equal Access Report").

The difficulties of equal access handoff are especially pronounced when the caller travels along the boundary of a service area or in an area where obstacles temporarily interfere with transmission to the closest cell site. In those situations, signal strength fluctuations may cause the handoff process to start many times in just a few minutes, though the call may never be handed off. Even if it were technically possible to establish a connection through the customer's PIC each time the handoff process begins, doing so would be prohibitively expensive because the interexchange carrier would incur access charges and other costs to set up connections that the caller might never use.

2. The Development of BOC PCS Systems. Bell company PCS providers face the same set of technical and practical problems that made a waiver for call handoff appropriate in the cellular field. While all PCS spectrum has not yet been allocated, the seven Bell companies already hold interests in "broadband" PCS

licenses that were purchased at auction for more than $2.1 billion. Each of these licenses conveys rights to use radio spectrum in the 1850-1990 MHz range; existing cellular licenses, by contrast, are for spectrum in the 824-894 MHz range. PCS licenses allow service within one of 51 major trading areas (MTAs) or 488 basic trading areas (BTAs). MTAs are substantially larger than the 306 metropolitan statistical areas (MSAs) and 428 rural service areas (RSAs) the FCC used to allocate cellular licenses. The Bell companies are moving quickly to construct operational PCS systems where they hold licenses, in part to satisfy build-out requirements established by the FCC. See 47 C.F.R. § 24.203 (1994).

The Bell companies' PCS networks will, in all relevant respects, be cellular systems by another name.[3] As explained in the accompanying affidavits discussing the Bell companies' plans to implement PCS, the networks will make use of a cellular architecture in which the same radio frequencies are reused in different cells within a licensed service area. The relationship between cell sites and mobile switches will be the same as in

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[3]The Department of Justice has said that "[t]here does not appear to be any substantial difference between the services that new PCS providers will be technologically able to offer and the services that cellular operators will be technologically able to offer." Comments of the United States Department of Justice at 5-6, Amendment of the Commission's Rules to Establish New Personal Communications Services, Gen. Dkt. No. 90-314 (FCC Nov. 9, 1992). AT&T (which is a major supplier of wireless network equipment, the leading cellular carrier, and the second-biggest spender at the FCC's broadband PCS auctions) likewise believes that "it is likely that the only difference between PCS and cellular will be that they use different bands of spectrum." Letter from David W. Carpenter to Donald J. Russell of August 18, 1995 at 2 (opposing July 28, 1995 waiver application of PCS PrimeCo).

traditional cellular and, as with current cellular systems, the PCS systems will route calls through a MTSO that is separate from any landline switch. See Affidavit of Hamid Akhavan ¶ 5-8 ("Akhavan Aff.") (attached hereto as Ex. 6) (PCS PrimeCo, including Bell Atlantic, NYNEX, and U S WEST); Fox Aff. ¶¶ 9-11 (BellSouth); Rainer Aff. ¶¶ 5-8 (SBC); Affidavit of Evan B. Richards ¶¶ 5-6 ("Richards Aff." (attached hereto as Ex. 7) (Ameritech); Affidavit of Steven Sidore ¶¶ 3-5 ("Sidore Aff.") (attached hereto as Ex. 8) (Pacific Telesis).

BOC PCS providers may use the very same network infrastructure equipment as cellular carriers. See Rainer Aff. ¶¶ 7-8; Ginter Aff. ¶ 3. Manufacturers likewise are developing handsets that will allow customers to place and receive calls in both traditional cellular service areas (at lower frequencies) and PCS service areas (at higher frequencies). Rainer Aff. ¶ 8; Richards Aff. ¶ 6. This equipment will allow callers to obtain continuous service as they travel between PCS systems operating in the 1900 MHz range and cellular systems operating in the 800 MHz range, much as cellular callers now travel between different 800 MHz systems.

BOC PCS providers, moreover, will adopt the same technical standards developed for cellular. Some will conform their systems to the IS-41 standard that is being used by about 85 percent of U.S. cellular systems. Akhavan Aff. ¶ 5; Rainer Aff. ¶¶ 7-8; see Wheeler Aff. ¶ 6. Others will use the GSM standard. Fox Aff. ¶ 9; Sidore Aff. ¶ 4. In either case, as the attached affidavits of technical experts, industry representatives, and equipment

manufacturers uniformly attest, there will be no significant difference between call handoff procedures for PCS and those used by existing cellular carriers.

ARGUMENT

I. THE EXISTING CELLULAR HANDOFF WAIVER PERMITS PCS HANDOFF

The existing cellular handoff waiver, by its terms, allows handoff "between . . . cellular systems." Handoff Decision, Order at 1; see Order (D.D.C. Sept. 6, 1995) (extending waiver). The history and logic of the waiver suggest that all PCS networks using cell sites and a mobile telephone switch separate from landline switching equipment should be considered cellular systems for purposes of the waiver. Indeed, any narrower construction of the handoff waiver would be inconsistent with the district court's understanding of cellular technology and prior administration of the decree.

A. The History of the Handoff Waiver Establishes that It Applies to PCS

The original decree offered no basis for distinguishing PCS from cellular or other mobile services. All mobile services appeared to fall within the decree's definition of local exchange operations, and the district court therefore declared in 1983 that radio services in which "either the transmitting or the receiving station is mobile" were "exchange telecommunications services" under the decree, while provision of such mobile radio services across LATA boundaries constituted prohibited interexchange service. United States v. Western Elec. Co., 578 F. Supp. 643, 644-45 (D.D.C. 1983)

Distinctions between various wireless services became relevant in the course of the waiver process. First, in briefing its request for a waiver allowing the BOCs to provide cellular services across LATA boundaries after divestiture, AT&T carefully described the cellular facilities for which it sought relief:

> [C]ellular radio systems currently consist of low-powered transmitters and stored program controllers that are located at strategic points in the mobile service area ("cell sites"), a Mobile Telecommunications Switching Office ("MTSO") which performs the exceedingly complex functions needed to establish and maintain communications with mobile vehicles within the serving area, dedicated transmission facilities which connect each radio channel in the cell sites to the MTSO and dedicated facilities that interconnect the MTSO to the network.

The Bell System's Further Memorandum in Support of its Request for a Ruling that the Regional Companies are Permitted to Provide Public Radio Services Without Regard to LATA Boundaries at 2 n.** (D.D.C. filed May 9, 1983). AT&T further explained that cellular radio was different from other mobile radio services in one key respect: Whereas "conventional" mobile systems used a high-powered transmitter to broadcast one signal per channel throughout the entire service area, "[t]hrough the use of numerous low powered transmitters, cellular systems allow the same channel to be used by numerous calls at the same time." Id. at 12 n.*. AT&T noted that federal regulation of cellular services was subject to change. In particular, it suggested that the FCC's award of two cellular licenses per service area was only an "initia[l]" allotment, which might be increased if consistent with "[t]he technological characteristics of cellular radio." Id. at 3 n.***.

In granting the requested cellular waivers, the Court relied on AT&T's description of cellular services. While noting that cellular technology was still "experimental," 578 F. Supp. at 646 n.14, it described the expected operation of cellular systems in the same terms as AT&T, focusing on the use of multiple, "moderately-powered transmitters" connected to a common MTSO and thence to the wireline network. Id. at 646 & n.17.

The cellular handoff waiver reflects the same architecture-based understanding of cellular. The district court assumed an architecture of mobile switches and cell sites. Handoff Decision at 18-19. Moreover, the court made clear that it intended to accommodate and affirmatively encourage new cellular technologies through the decree. The court rejected claims that the Bell companies should be limited to offering a fixed set of cellular services, or only those services their non-BOC competitors offer. This, the court said, would "stifle advances in cellular services" and impede technological progress. Id. at 23-24.

The district court specifically anticipated the particular technological and regulatory developments that led from traditional cellular to PCS. Citing comments submitted in response to the Bell companies' waiver requests, the court noted that "several developments in the cellular phone market" might in the future make cellular calling more competitive with landline services. Id. at 32-33 & n.33. These included an "increase in radio spectrum authorized by the FCC," use of a digital cellular format to increase capacity, and "additional expansions of the boundaries of

integrated cellular systems" to include multiple LATAs. Id. at 33 n.33. The fact that the court viewed new spectrum, digitalization, and larger authorized calling areas as consistent with its definition of "cellular" further suggests that the cellular handoff waiver applies to PCS.

The fact that BOC PCS systems -- unlike current BOC cellular systems -- may place their switches or cell sites on telephone company property should make no difference to this analysis. See Amendment of the Commission's Rules to Establish New Personal Communications Services, 8 FCC Rcd 7700, 7747-52 (1993) (rejecting separate subsidiary requirement for LEC participation in PCS). All BOC PCS systems will use the architecture that defines "cellular" under the district court's waiver decisions: multiple cell sites controlled by a MTSO that is separate from any landline switch, save for the same sort of connection that would be found between any separate wireless network and the local exchange.

The court's adoption of a separate subsidiary requirement in its recent generic wireless decision also does not affect the applicability of the cellular handoff waiver to PCS. See United States v. Western Elec. Co., 890 F. Supp. 1 (D.D.C. 1995). There, the Department successfully urged that the waiver for wireless interexchange services "be limited to services provided by corporations that have been established as separate subsidiaries . . . and are physically and operationally separate from LEC facilities." Id. at 7.

The Bell companies have asked the court of appeals to strike this restriction on generic wireless relief. See Brief for the Bell Company Appellants, United States v. Western Elec. Co., No. 95-5137, at 29-37, 43-46 (D.C. Cir. filed Aug. 11, 1995). But regardless of the outcome of that appeal, the cellular handoff waiver contains no similar separate subsidiary requirement. Furthermore, the district court never suggested in the generic wireless proceeding that the separation requirement relates to the definition of cellular service; on the contrary, the court indicated that it viewed the separation requirement as restricting relief to a subset of the wireless systems that qualify as "cellular networks." 890 F. Supp. at 7.

B. Applying the Cellular Handoff Waiver to PCS Raises No Competitive Concerns

Precisely because the Bell Companies will use their licenses to provide the functional equivalent of traditional cellular service, applying the cellular handoff waiver to interLATA handoff by PCS systems raises no competitive concerns.

PCS providers' use of different radio frequencies than traditional cellular and the FCC's establishment of different licensed service areas have no possible bearing on call handoff. Moreover, the critical physical feature of PCS networks is their use of a mobile switch and cell sites that are not "bottleneck" facilities. See United States v. Western Elec. Co., 46 F.3d 1198, 1200, 1207 (D.C. Cir. 1995) (cellular systems consist of "separate systems of radio and switching facilities that are interconnected to and dependent on the local bottleneck 'landline' telephone

monopoly" and "are not 'bottleneck monopolies'"). BOC PCS systems will connect to the landline network in the same manner as today's cellular systems do; they will not be part of that network. While some PCS systems may place switches on telephone company property, see Fox Aff. ¶ 6, that simply means that they will utilize shorter connections to landline equipment than the current cellular networks, a difference that is of no consequence under the decree.

Wireless customers who do not wish to use BOC PCS facilities will have the option of placing their calls over existing cellular networks or other PCS systems. This freedom to choose eliminates any concern that BOC PCS systems might discriminate against interexchange carriers if allowed to provide interLATA handoff. See SBC Communications Inc. v. FCC, 56 F.3d 1484, 1491-92 (D.C. Cir. 1995) (rejecting application of "bottleneck" concerns to competitive wireless systems).

There likewise is no risk that a BOC could capture interexchange customers by shifting costs from wireless services to wireline monopoly services. The FCC has determined that regulatory safeguards are sufficient to prevent such anticompetitive cost-shifting.[4] 8 FCC Rcd at 7751. Under the cellular handoff waiver,

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[4]Relevant safeguards include the Commission's joint cost and cost accounting rules, as well as price cap rules that diminish or eliminate BOCs' incentives to shift costs to rate-regulated operations. Separation of Costs of Regulated Tel. Serv. from Costs of Non-regulated Activities, 2 FCC Rcd 1298 (1987) ("Joint Cost Order"), recon., 2 FCC Rcd 6283 (1987), further recon., 3 FCC Rcd 6701 (1988); Revision of the Uniform Sys. of Accounts and Financial Reporting Requirements for Class A and Class B Tel. Cos., 60 Rad. Reg. 2d (P & F) 1111, 1137 (1986) (accounting rules); Policy and Rules Concerning Rates for Dominant Carriers, 5 FCC Rcd 6786 (1990) (price caps), reconsidered, 6 FCC Rcd 2637 (1991); Price Cap

moreover, the BOCs must obtain the interexchange facilities used to accomplish call handoff from unaffiliated carriers; they will not construct their own interexchange lines. The charge for call handoff also is incorporated in a wireless carrier's usual airtime charge. Thus, a BOC would have to lower its rates for all intraLATA calls to encourage use of BOC services for that fraction of calls that are handed off. See Equal Access Report at 14-15.

Finally, it would be impossible for Bell company PCS providers to use the handoff waiver as a vehicle for competing with interexchange carriers. Handoff involves the provision of interexchange services that are required to accommodate a customer's movement from one LATA to another during a call. In order to take business away from an interexchange carrier, therefore, a Bell company would have to convince the customer to cross LATA boundaries. To place a call from LATA A to LATA B through the BOC, the customer would have to drive from LATA A to LATA B, place the call, and then drive back to LATA A while the call is in progress. That would defeat the whole point of wireless telephony (for which callers pay a premium) -- the freedom to communicate from wherever the caller happens to be. Moreover, a caller who is willing to travel to another LATA to save on long distance charges would do so, and not use an interexchange carrier in the first place.

Performance Review for Local Exchange Carriers, 10 FCC Rcd 8891 (1995).

Given that the language, history, and logic of the current cellular handoff waiver all cover contemplated BOC PCS services, the Bell companies believe that no further modification of the decree is necessary to allow them to hand off PCS calls on an interLATA basis without an equal access requirement. So that the Bell companies can plan their services and construct their systems with certainty, however, we ask the Department to confirm that this is its understanding as well.

II. IN THE ALTERNATIVE, AN INTERLATA HANDOFF WAIVER SHOULD BE APPROVED FOR PCS

If it nevertheless concludes that the existing cellular handoff waiver is inapplicable to PCS, the Department should recommend quick judicial approval of the attached proposed order providing appropriate relief. Consistent with the district court's recent order granting a further temporary extension of the cellular handoff waiver, see Order (D.D.C. Sept. 6, 1995), this waiver would allow interLATA handoff of PCS calls, without an equal access obligation, through September 14, 1998.

Given the cellular handoff waiver, no extended analysis of a similar waiver for PCS should be necessary. The justification for this waiver is the same one accepted by the court when it approved the original cellular handoff waiver and thrice extended it: The waiver is needed to allow BOCs to compete in the wireless marketplace; it will benefit consumers and the entire wireless industry; and it presents no threat to interexchange competition.

1. BOC PCS providers must have the ability to participate in handoff in order to provide the uninterrupted service that wireless

customers have come to expect and that all existing cellular carriers and non-BOC PCS providers can offer. As with cellular, moreover, "an equal access condition would essentially defeat the purpose of the waiver." Handoff Decision at 18. The IS-41 and GSM standards assume the use of dedicated connections between MTSOs and do not allow carriers to hand off calls on an equal access basis. Ginter Aff. ¶¶ 4-5; Affidavit of Cheryl J. Blum ¶¶ 3-4 ("Blum Aff.") (attached hereto as Ex. 9).[5] Manufacturers that are developing PCS equipment thus agree that it will not be possible to set up an interexchange call and coordinate handoff through the customer's PIC in the fraction of a second allowed for transferring the call to a new wireless system. See Ginter Aff. ¶¶ 4-5; Barnes Aff. ¶¶ 2-4.

There is no indication that incorporating equal access into the handoff process will become possible any time soon. On the contrary, the use of digital, rather than analog technology in PCS and the relatively high frequency at which PCS systems operate decrease the time available to implement handoff, making use of a PIC that much more difficult than in today's cellular systems. Ginter Aff. ¶ 4; see also Rainer Aff. ¶ 12, Akhavan Aff. ¶¶ 13-14.

Absent relief from the decree's interexchange and equal access requirements, a BOC PCS system would have to drop calls when the caller crosses a LATA boundary or travels into a non-BOC service area where there is the possibility of crossing a LATA boundary.

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[5]This affidavit was originally submitted to the Department on August 11, 1995, in connection with the BOCs' request for an extension of the cellular handoff waiver.

This nonsensical application of the decree's interLATA restriction (which the court has said does not reflect "the technological and competitive issues implicated by mobile radio services," 578 F. Supp. at 648) would frustrate the FCC's decision to award MTA-wide licenses, deny consumers calling capabilities they demand, and cripple BOC PCS carriers.

The handoff problem is even more acute for PCS providers than for traditional cellular carriers. The MSAs and RSAs used to license traditional cellular service generally lie within a single LATA. By contrast, MTAs may include portions of several different LATAs. The Northern California MTA that Pacific Telesis will serve, for example, contains part or all of 9 different LATAs. Sidore Aff. ¶ 8.

BOC PCS carriers will divide their licensed service areas, to the extent required by the decree, into smaller service areas that reflect LATA boundaries. The cell sites in different LATAs will be separately controlled by their own MTSOs, or by a dedicated or partitioned portion of a shared MTSO, and will essentially operate as separate systems. Over and above the need to accommodate handoff of calls to a different system in an adjacent licensed service area, therefore, PCS carriers require a handoff waiver to allow uninterrupted service within their own MTAs. The only alternative is to disconnect calls just because the caller has crossed a LATA boundary -- precisely the result the cellular handoff waiver was granted to avoid. See Handoff Decision at 19 ("The effect of the waiver is to permit Regional Companies to hand

off calls which are initiated intra-LATA even when they become inter-LATA upon crossing a LATA boundary.").

"Seamless" wireless service -- the ability to call anytime, anywhere and to keep calls in progress while moving from one place to another -- is desired by consumers and is the goal of wireless carriers. See Wheeler Aff. ¶ 7; Fox Aff. ¶ 26. If a BOC PCS system cannot offer the same seamless service as all competing wireless carriers, it will be at a major competitive disadvantage. The customer who crosses a LATA boundary after placing a call would be cut off without warning and then would incur long distance charges, in addition to airtime charges, to re-initiate the call. See Richards Aff. ¶ 8(3); Sidore Aff. ¶ 9; Fox Aff. ¶¶ 22-26. The customer might be disconnected several times when traveling along a system boundary or in areas with obstructed coverage. If unaware of system boundaries, moreover, the caller would likely think that the BOC's service had failed and might choose a new carrier on that basis. See Wheeler Aff. ¶ 6; Sidore Aff. ¶ 9.

Denying BOC PCS carriers the ability to hand off interLATA calls would diminish competition in the wireless industry and prevent the most efficient utilization of spectrum allocated to PCS by the FCC. See Wheeler Aff. ¶ 9. Moreover, the benefits of a PCS handoff waiver will accrue to the entire wireless industry. As the President and Chief Executive Officer of the Cellular Telephone Industry Association explains, a handoff waiver would allow non-BOC carriers that operate PCS or existing cellular systems adjacent to BOC PCS systems to enter into handoff agreements that afford their

customers uninterrupted coverage in BOC service areas. Id. ¶ 10; see Akhavan Aff. ¶ 11; Rainer Aff. ¶ 11. Non-BOC customers who use BOC PCS systems as roamers also would benefit from seamless service within the BOC's territory, making the roaming service of the customer's home carrier that much more valuable. Id. ¶ 11; Akhavan Aff. ¶ 11; Rainer Aff. ¶ 11.

2. Even if equal access were technically feasible, requiring use of a PIC would be enormously inefficient and unnecessarily expensive. As the Department explained in 1991 (based on information then provided by the Bell companies), the cost of a dedicated connection between two MTSOs, averaged over all calling for the two systems comes to less than 0.001 cent per minute of airtime. Customers would have to pay retail long distance rates that are thousands of times higher if calls were carried through a PIC. Equal Access Report at 14-15. And callers would not have any warning that they were about to incur those charges, since the handoff process occurs automatically when a caller reaches an invisible system boundary. Id.

The absurdity of equal access handoff would be even more extreme in the case where dedicated or partitioned portions of the same MTSO serve cell sites in different LATAs. Under the proposed waiver, handoff in that case would be accomplished within a single building at essentially no cost. If use of a PIC were required, however, the call would have to be transferred from the MTSO, to an interexchange carrier's point-of-presence in the LATA that the caller is leaving, through the interexchange carrier's network to

the LATA the caller is entering, and then back to the BOC PCS provider and ultimately the same MTSO that initiated the handoff. The call might travel through several switches and hundreds of miles of cable -- at substantial cost to the customer -- to end up essentially where it started.

3. Finally, a PCS handoff waiver presents no risk that BOCs might be able to use their control over landline local exchange facilities to impede competition in any interexchange market. In 1990, the district court concluded that the cellular handoff waiver would be competitively benign, subject to a condition requiring that BOCs lease all necessary interexchange links from unaffiliated interexchange carriers. Handoff Decision at 11-12. The attached proposed order contains the same restriction found appropriate by the district court, as well as a landline equal access provision similar to the one contained in the 1990 Order. As already discussed, moreover extending the existing relief to PCS would raise no competitive danger. See supra pp. 12-15.

CONCLUSION

The Department should formally interpret the existing cellular handoff waiver as allowing interLATA handoff of PCS calls without an equal access obligation or, in the alternative, support entry of the attached proposed order. The Department should act quickly so that the BOCs can move forward with some certainty to construct their PCS systems.

Respectfully submitted,

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October 26, 1995

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA, Plaintiff, v. WESTERN ELECTRIC CO., INC. and AMERICAN TELEPHONE AND TELEGRAPH COMPANY, Defendants.	Civil Action No. 82-0192 (HHG)

ORDER

Upon consideration of the Motion of the Bell Companies for a Waiver to Allow InterLATA Handoff of PCS Calls, filed October 26, 1995, and good cause having been shown therefor, it is this ____ day of _____, 1995,

ORDERED that the motion be and it hereby is GRANTED on a temporary basis, through September 14, 1998; and

FURTHER ORDERED that each Regional Company may provide interLATA handoff between those personal communications service (PCS) systems owned or controlled by or affiliated with the Regional Company and any adjacent wireless system, or between areas served by a PCS system owned or controlled by or affiliated with the Regional Company, including the provision of any necessary transmission facilities between mobile telephone switching offices ("MTSOs"), to allow the continuation of calls in progress without interruption or degradation of service due to the movement of the

mobile unit or the characteristics of radio propagation, provided that:

(1) the terms and conditions, including price, on which the Regional Company provides exchange access and interconnection to its PCS systems shall be no more favorable than those offered to competing wireless systems; and

(2) the interexchange links for the multi-LATA PCS service authorized by this Order, if any, shall be leased from unaffiliated interexchange carriers on terms and conditions, including price, no more favorable than those available to the Regional Company's competitors.

HAROLD H. GREENE
United States District Judge

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3	Thomas E. Wheeler, Cellular Telecommunications Industry Association (Aug. 22, 1995)
4	Thomas Ginter, Ericsson, Inc. (Sept. 20, 1995)
5	Donald A. Barnes, Motorola, Inc. (Sept. 22, 1995)
6	Hamid Akhavan, PrimeCo, L.P. (Oct. 11, 1995)
7	Evan B. Richards, Ameritech Mobile Communications, Inc. (Oct. 18, 1995)
8	Steven Sidore, Pacific Bell Mobile Services (Sept. 22, 1995)
9	Cheryl J. Blum, Telecommunications Industry Association (Aug. 10, 1995)